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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,298	10/14/2003	David C. Fogg	70163-9157-00	9825
23409	7590	01/10/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			TRETEL, MICHAEL	
		ART UNIT	PAPER NUMBER	
		3673		

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/685,298	FOGG, DAVID C.
Examiner	Art Unit	
Michael Trettel	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 November 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 15-29 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-12 is/are allowed.
- 6) Claim(s) 13,15-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 102*

Claims 13, 15, 16, 18, and 23 to 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (US 5,117,519). Thomas shows a therapeutic mattress cover 11 which is placed over a conventional mattress 13. The mattress 13 forms a rectangular elastic core with a width and length covered by the mattress cover 11. Mattress cover 11 includes a skirt 19 with elasticized corners 21 that engage the mattress corners to hold the cover in place. Sections 25, 27, 29, 31, and 33 are formed in the cover 11 which overlay the upper surface of the mattress. Each section includes rectangular top and bottom filler pads 35, 37 made from polyester foam material which are the same width as the mattress, and whose length can be varied on a section wide basis as set forth in column 4, lines 6 to 18. The cover also includes a top sheet layer 39, an intermediate sheet layer 41, and a bottom sheet layer 43 all made of fabric material. Transverse stitching 45 separates the sections 25, 27, 29, 31, and 33 from one another and joins the layers 39, 41, and 43 to one another. This construction forms sleeves that hold and retain the filler pads 35, 37 in an array spaced parallel to one other, with the pads being separated transversely only by the material used to form the sheet layers 39, 41, and 43. The pads are rectangular in form, and when viewed from above have sides which are parallel to one another. The claims do not state

that the sides are formed as a planar surface, and as such the claims are still anticipated by Thomas.

***Claim Rejections - 35 USC § 103***

Claims 17 and 19 to 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (US 5,117,519). Thomas states in column 4, lines 6 to 18 that the widths of the filler pad sections 25, 27, 29, 31, and 33 can be varied as much as 3 inches in either way. This means that the width of the filler pads (identical to the claimed strip length) could be set to be an identical dimension and thus this limitation is within the ordinary level of skill in the art. In addition it is already well known in the art to use viscoelastic foam material as a construction material from making a foam pad, and as such it would have been obvious to the skilled artisan to have used viscoelastic foam to make the filler pads of the Thomas mattress cover. The thickness of the Thomas filler pads are also within the ordinary level of skill in the art, and the use of foam material with differing harnesses in order to create a posturized support surface is also well known in the art. Therefore the subject matter of these claims is considered to be within the ordinary level of skill in the art, and would have been obvious to the skilled artisan.

***Response to Arguments***

Applicant's arguments filed November 25, 2005 have been fully considered but they are not persuasive. The applicant's arguments with respect to claims 1 to 12 have been reviewed and have been agreed with. The rejection of claims 1 to 12 has been removed. With respect to claims 13 and 15 to 28, the crux of the applicant's argument is based upon the assertion that the

Thomas patent does not show the use of adjacent parallel sides between the foam strips of the cover. The examiner disagrees with the arguments presented, and notes that the arguments presented are more specific than what the claims actually state. Claim 13 sets forth the limitation "wherein adjacent strips have parallel facing sides positioned side-by-side", which is shown by Thomas when one views the cover from overhead. The filler pads used in Thomas are formed as rectangular bodies placed in a side by side array, which means that the sides of each filler body are parallel to the body adjacent thereto. The sides set forth in the claims are not defined as being formed as a planar surface, which appears to be the type of limitation that the applicant is asserting as defining patentable subject matter. Claim 23 sets forth an even broader limitation, "wherein adjacent strips have parallel facing sides". As noted in the rejection the Thomas cover does show such a structure when the cover is viewed from overhead. Because of this the rejection of claims 13 and 15 to 28 has been repeated. Claim 29 has been included in the rejection, since it also defines the sides of the foam portions in a fashion similar to that used in claims 13 and 23.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Lee, can be reached on (571) 272-7044. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
Art Unit 3673